IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 6395 OF 2005.
IN
FIRST APPEAL NO. 990 OF 2006.

The State of Maharashtra. ... Applicant.
Versus.
Kanha Kathor Patil and others. ... Respondents.

Shri A.R.Patil for the Applicant.

Shri Rajesh B.Parab for the Respondents Nos.1 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 2nd August, 2006.

P.C.:

1. Heard the learned Advocate appearing for the parties. The First Appeal is already admitted for final hearing. By the present appeal, the Applicant/ Appellant has taken exception to the judgment and award made under section 28A(3) of the Land Acquisition Act, 1894. The acquired land is situated in Panvel, Taluka Panvel, Dist. Raigad, which was notified for acquisition under notification dated 3rd February 1970 for public purpose of New Bombay Project. By the impugned Judgment and Award the market value at the rate of Rs.28/- per sq.meter has been fixed along with grant of statutory benefits. The only dispute raised in the Appeal is as regards the market value awarded by the Reference Court.

2. There are decisions of this Court by which the market value of the land acquired from Panvel for New

Bombay Project under Notification dated 3rd February 1970 has been fixed in the range between Rs.18 to Rs.23/- per square meter. One of the said decisions is the case of Nama Padu Hudar (First Appeal No.754 of 1986) which was decided by a Division Bench. The said decision has attained finality and in fact the same has been expressly approved by the Apex Court in one of the recent decisions. Therefore, in this case the market value of the acquired land cannot be less than Rs.18 per square meter.

3. In view of this peculiar feature of the case, out of the amount deposited by the Applicant-State, 50% of the amount will have to be permitted to be withdrawn by the original Claimants without any security subject to filing an undertaking and the remaining amount will have to be permitted to be withdrawn on furnishing security.

4. Hence the Civil Application is disposed of by the following order:

i) There will be ad-interim relief in terms of prayer clause (b) subject to condition of the Applicant depositing the entire amount due and payable under the impugned award with the Reference Court within a period of 12 weeks from today.

ii) If the amount is not deposited within the stipulated time, the interim relief granted will stand vacated without further reference to Court.

iii) If the amount is deposited, the Reference Court will permit the original Claimants to withdraw 50% of the said amount subject to filing of the undertaking in writing before the reference Court to redeposit the said amount with appropriate rate of interest in case the Applicant succeeds in the Appeal.

iv) The balance amount will be permitted to be withdrawn by the original Claimants subject to furnishing adequate security to the satisfaction of the Reference Court. The Reference Court will hear the Applicant before accepting the security.

v) No order as to costs.

Judge.